

EXHIBIT B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 127 (KMW)

5 STEVEN SIMMONS,
6 JOSEPH MELI,

7 Defendants.

-----x

8 New York, N.Y.
9 September 18, 2017
10 10:45 a.m.

11 Before:

12 HON. KIMBA M. WOOD
13 District Judge

14 APPEARANCES

15 JOON H. KIM
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: ELISHA KOBRE
19 Assistant United States Attorney

20 FLORIAN MIEDEL
21 Attorney for Defendant Steven Simmons

22 DANIEL FETTERMAN
23 JEFFREY ALEXANDER
24 DANIEL STEIN
25 Attorneys for Defendant Joseph Meli

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1 (Case called)

2 (In open court)

3 MR. KOBRE: Good morning, your Honor. Elisha Kobre
4 for the government.

5 THE COURT: Good morning.

6 MR. FETTERMAN: Good morning, your Honor. Daniel
7 Fetterman for defendant Meli, and with me is Jeff Alexander
8 from my office; and we're being joined by Dan Stein as
9 cocounsel.

10 THE COURT: Very good.

11 MR. STEIN: Good morning, your Honor.

12 MR. MIEDEL: Good morning, your Honor. Florian Miedel
13 for Mr. Simmons.

14 THE COURT: Good morning. The defendants need to be
15 arraigned on the superseding indictment. Perhaps we should do
16 that first.

17 Mr. Miedel, I'm asking you whether you are prepared
18 for your client to be arraigned.

19 MR. MIEDEL: Yes, I am.

20 THE COURT: And have you had an adequate opportunity
21 to review the superseding indictment?

22 MR. MIEDEL: Yes, we have.

23 THE COURT: Is he ready to plead?

24 MR. MIEDEL: He pleads not guilty.

25 THE COURT: Thank you.

H9I7SIMC

1 Mr. Fetterman?

2 MR. FETTERMAN: Yes, your Honor. Mr. Meli has
3 reviewed the indictment, and he waives its public reading, and
4 he would like to enter a plea of not guilty.

5 THE COURT: All right, thank you. I have a trial that
6 would begin in the middle of your trial. I may be able to move
7 it, but it causes me to wonder whether your trial could be
8 moved a little earlier. Mr. Fetterman?

9 MR. FETTERMAN: Your Honor, we actually had put in a
10 motion for an extension of the trial date. I'm not sure if
11 your Honor had an opportunity to review it.

12 THE COURT: I don't think I have. What is the
13 reasoning behind it?

14 MR. FETTERMAN: So, your Honor, at the last conference
15 I think the way it was left was the government had some
16 additional documents to produce, and my colleague, Mr. Bowen,
17 said we would like to see that and then come back to the court
18 about whether 90 days would be an appropriate amount of time.

19 As it turns out, your Honor, our motion is based on
20 the fact that since that conference the government has produced
21 more than 2 million pages of documents from 70 custodians.

22 And I think the following facts are undisputed --
23 obviously Mr. Kobre will correct me if he disagrees -- but
24 since that conference, your Honor, the government has produced
25 more than 800,000 documents totaling more than 2.1 million

H9I7SIMC

1 pages. The government productions in August of this year --
2 which was a majority of those documents, more than a million
3 pages were produced in August -- were both infected and
4 incomplete; some of them we didn't get fully loaded until
5 August the 30th.

6 The total production, as I mentioned, was from 70
7 custodians, which in my view alone would necessitate an
8 adjournment, because of just the time involved for us to
9 investigate 70 custodians and their relationship to the case.

10 The government has refused -- and this is the second
11 motion we also made for a bill of particulars -- the government
12 has steadfastly refused to identify the victims and to connect
13 the investors and the victims identified in the indictment to
14 particular events. And this is important, your Honor, because
15 the nature of this alleged scheme is that our client made
16 misrepresentations about having contractual rights to purchase
17 tickets to various events. And the number of events that are
18 in play is more than we believe 20. And we have asked for and
19 made a motion to the court for a bill of particulars simply
20 identifying who the victims are, who the investors are and
21 which scheme the government asserts they were defrauded
22 through -- let me rephrase that -- which event the government
23 alleges they were defrauded.

24 The government brought a superseding indictment, as
25 the court knows, on September the 5th, and plans -- and said in

H9I7SIMC

1 response to our motion that they plan to produce even more
2 documents, unidentified volume.

3 Finally, your Honor, on September the 6th they
4 arrested Craig Carton, which your Honor may have seen, and our
5 client is named we believe as an unindicted coconspirator, CC1,
6 in that complaint.

7 So, we're making this motion, your Honor, not for
8 delay purposes but really profoundly for due process, that for
9 us to review more than 2 million pages of documents, to
10 investigate the 70 custodians and the like, and to make
11 motions -- which were due today, your Honor -- is just not
12 feasible.

13 So, we asked the court in our motion papers -- and we
14 have a copy. I can hand it up -- to push the trial date back
15 simply to -- your Honor had set some reserve dates in January.
16 It was I believe the 2nd, the 8th and the 15th, those weeks,
17 and we ask that the trial start January the 8th.

18 To my great surprise, your Honor, in their response
19 the government dropped a footnote and said that would interfere
20 with their trial calendar. But at the last conference your
21 Honor ordered both parties to hold these January dates open.
22 So, we think in the interests of justice and due process that
23 moving the trial back to January the 8th is necessitated.

24 THE COURT: How long do you think this trial will take
25 roughly?

H9I7SIMC

1 MR. KOBRE: Your Honor, we think it will take about
2 two to three weeks. And, your Honor, if I might have the
3 opportunity to respond.

4 We received defense counsel's motion on Friday, and
5 last night we put in a written submission, which I have a copy,
6 opposing defense counsel's request for an adjournment of trial.

7 THE COURT: Yes, I will read that.

8 MR. FETTERMAN: I have a copy of both.

9 THE COURT: Apparently I have it here, so let me read
10 it.

11 Roughly what quantity of discovery was already
12 produced? I don't have a feeling for that.

13 MR. KOBRE: Sure, your Honor. So, by the time of the
14 last conference a fair amount of discovery had been produced.
15 I don't know the number of pages, your Honor, but the bulk of
16 the most relevant and central material to this case had already
17 been produced at that time. I can give your Honor a better
18 sense of what was produced after, so you have a sense of that.

19 What was produced afterwards -- and as we told the
20 court at the conference, there were essentially two categories
21 of materials still left to be produced. There were some bank
22 and business type records in the nature of sort of subpoena
23 returns. And then there were e-mail accounts that the
24 government had recently received and needed to review both for
25 privilege and for relevance before turning those over to the

H9I7SIMC

1 defense. So, the bulk of what defense counsel is referring to
2 was produced after the conference were those e-mail accounts
3 that were reviewed.

4 Now, essentially the bulk of those e-mails are
5 actually e-mail accounts that belong not to the defendant --
6 those had already been produced before the conference to the
7 extents they existed -- they were, rather, an e-mail account
8 belonging to a potential cooperating witness, a cooperating
9 witness in this case, which quite frankly, your Honor, is
10 mother in the nature of sort of 3500 material rather than Rule
11 16 discovery. But we produced it early on so defense counsel
12 would have that.

13 We also produced, your Honor, the phone belonging to
14 that cooperating witness, like the data from that phone. We
15 produced e-mails from accounts of other third parties that we
16 had a chance to review and turn over.

17 Just so your Honor also has a sense, at the
18 conference, as your Honor may recall, you set a discovery
19 deadline of August 31. The bulk of the materials that defense
20 counsel is referring to, these e-mail accounts, were all
21 produced by August 1. That's four months, your Honor, before
22 the trial date that your Honor had scheduled.

23 There was a subsequent production of just sort of
24 business and bank type records in the nature of subpoena
25 returns. I think defense counsel makes a lot of that. But

H9I7SIMC

1 when you sort of look at what that discovery material is, it's
2 really not the sort of thing that really will take or should
3 take defense counsel much time to review.

4 For example, your Honor, 6,000 pages are, for example,
5 AT&T records for a phone that doesn't belong to either of the
6 defendants.

7 THE COURT: What is their relevance?

8 MR. KOBRE: They maybe belong to a potential
9 coconspirator or, you know, other entities that might somehow
10 be peripherally related to this scheme, but they're not -- you
11 know, the government produced those records not really because
12 we plan to introduce them at trial but simply in an abundance
13 of caution.

14 THE COURT: Well, they still have to be reviewed.

15 MR. KOBRE: Sure, your Honor, but they're not central
16 to the case here. The records that defendant is talking about,
17 and they're really relevant, are the bank records. We produced
18 the agreements that are at issue here that were fraudulent
19 agreements, and the bank records, and records relating to the
20 victims. And those, your Honor, were all produced quite early
21 on in this case, and not only were they produced, but they were
22 produced in a very organized manner.

23 Just so your Honor has a sense, for example, with
24 respect to records from victims, we actually -- not trying to
25 hide the ball, we created folders with the names of the victims

H9I7SIMC

1 and put the records that were obtained from those victims into
2 those folders.

3 So, you know, it's kind of a red herring for defense
4 to say, well, we don't know who the victims are that you are
5 alleging here, when they have sitting on their hard drives
6 folders with the names of victims and documents relating to
7 those individuals. They have the agreements that the
8 government is alleging are fraudulent all produced very early
9 on.

10 So, your Honor, quite frankly this is a red herring.
11 The defense has had the discovery in this case, the vast bulk
12 of it, months and months before trial, and there is really no
13 need for an adjournment here.

14 THE COURT: All right.

15 MR. FETTERMAN: Your Honor, if I may just respond to a
16 couple of things. I believe at trial we will demonstrate to
17 the court, to the jury, to the government, that they under
18 investigated this case, that they don't have a complete picture
19 of that happened.

20 So, while Mr. Kobre may represent to the court that
21 they have produced the bulk of documents that are critical to
22 their case, that's not necessarily true for us, your Honor.
23 That's the first point. The second point your Honor made,
24 which I thought was important, is we can't take their word for
25 whether this is potential 3500 material or may be tangential.

H9I7SIMC

1 These are in the words of Mr. Kobre coconspirators, potential
2 coconspirators. And as we're going through this we need to
3 look at those documents, and we can't take their word for it.

4 Finally, I would just suggest, your Honor, that on
5 August the 1st they made a production. There were technical
6 problems with their production. They sent a cover letter that
7 was incomplete. So, they may have technically sent that
8 production out the door, but it wasn't necessarily reviewable
9 by us on August the 1st.

10 I think respectfully just about any court in this
11 courthouse, if lawyers came and said, your Honor, we have
12 received close to two million documents since the last
13 conference, we have 70 custodians we need to look into, asking
14 for eight weeks we think is a very reasonable ask and frankly
15 required by due process.

16 THE COURT: The date you have asked for is?

17 MR. FETTERMAN: January the 8th, your Honor.

18 THE COURT: I think that's a reasonable request. I
19 may have to send this case to another judge because I have two
20 other trials during the time of January 8 through the 26th. I
21 will check around about that.

22 MR. KOBRE: Your Honor, if I might be heard briefly.

23 THE COURT: Yes.

24 MR. KOBRE: Would December be a possible alternative?

25 THE COURT: Over the Christmas holidays doesn't sound

H9I7SIMC

1 to me like a good way of getting juror attention.

2 MR. KOBRE: That's probably correct, your Honor. I am
3 just trying to avoid a situation. I know your Honor had
4 directed the parties to reserve some dates in January. You
5 know, unfortunately both of the assistants in this case sort of
6 had trials scheduled at some point in February. But
7 understanding that, your Honor, if there was a way to sort of
8 instead of having the January 8, to sort of move that up a
9 little bit earlier, perhaps the first week of January.

10 THE COURT: I could do that.

11 MR. FETTERMAN: Your Honor, may I be heard on that?
12 We asked for January the 8th intentionally. We're asking for
13 that eight weeks over the Thanksgiving holiday, over the
14 Christmas/Hanukkah holidays, over New Year's. I mean those are
15 not eight full weeks for us, and January the 2nd would have
16 been seven. So we ask for that additional week.

17 I just don't think that the government should be heard
18 to complain when the court specifically directed both parties
19 to leave the weeks of the 2nd, the 8th -- I think it's the 2nd,
20 the 8th and the 15th open, that they now have a conflict.

21 THE COURT: All right. Let me ask, when will the
22 assistants who are on this case be free of their other trial?

23 MR. KOBRE: Your Honor, the trials are both scheduled
24 to begin in early February, and so I think they're probably two
25 to three week trials.

H9I7SIMC

1 THE COURT: All right. So if we set this for January
2 2, presumably they could work it.

3 MR. KOBRE: I think that would help tremendously, your
4 Honor.

5 THE COURT: It would also help my trial calendar; I
6 would have fewer conflicts. And I do think that that is an
7 ample continuance. So, trial will begin January 2 at 9 in the
8 morning. We will be trying the case each day from 9:30 to 2:30
9 with a half hour break at lunchtime. That should give counsel
10 extra time to review documents and get any work done that
11 wasn't done before January 2.

12 All right. I think we need a Speedy Trial Act
13 adjournment.

14 MR. KOBRE: Yes, your Honor. The government would ask
15 that to allow the defense to continue to review discovery and
16 consider their motions.

17 THE COURT: All right. Do defense counsel have any
18 objection to that exclusion?

19 MR. MIEDEL: No, objection.

20 MR. FETTERMAN: No.

21 THE COURT: In light of the fact that counsel have
22 requested time to review voluminous discovery and to consider
23 what if any motions to make, I find that an exclusion of time
24 from today through January 2 is in the interests of justice and
25 that those interests outweigh the interests of the defendants

H9I7SIMC

1 and the public in a speedy trial. I thus exclude that time.

2 You stood up?

3 MR. MIEDEL: Well, your Honor, I stood up because I
4 would ask that the other dates, including motions, be adjusted
5 accordingly.

6 THE COURT: I was about to do that.

7 MR. MIEDEL: OK.

8 THE COURT: What do counsel propose?

9 MR. FETTERMAN: Your Honor, we had a proposed schedule
10 based on the January the 8th date.

11 THE COURT: If you move it back a week, what are you
12 proposing?

13 MR. FETTERMAN: That our motions would be due October
14 the 23rd. I need to get the calendar out. I can give you the
15 original dates that we had requested and then perhaps --

16 THE COURT: The 23rd is a Monday.

17 MR. FETTERMAN: Is a Monday? So that works. We had
18 asked that the discovery be completed. The government
19 referenced that they plan to make further productions, and I
20 would ask that Mr. Kobre represent now what the volume is going
21 to be. Because he suggested that if the court didn't move the
22 trial date, he would identify which specific documents he was
23 going to use, which sounded to me like it was going to be a
24 fairly voluminous production. I would like to know now so that
25 we don't find ourselves in the same position. But assuming

H9I7SIMC

1 it's not a tremendous volume, your Honor, I think we were
2 proposing that discovery be completed by October the 7th. We
3 have the 12th, so, sorry, October the 5th would be a week
4 early.

5 THE COURT: OK. Mr. Kobre, what is the volume of that
6 discovery?

7 MR. KOBRE: Your Honor, right now I'm aware of 1,000
8 or 2,000 additional documents. But I must tell your Honor that
9 our investigation is continuing, so we are continuing to obtain
10 records as our investigation develops, and we will produce it
11 promptly as soon as we get it, but we're just not going to stop
12 our investigation in order to accommodate defense counsel's
13 schedule.

14 To the extent that the material comes in too late to
15 be used at trial, you know, so be it and the court can order
16 that. But, you know, I can tell you that right now what is in
17 our possession is I believe it's about 2,000 documents.

18 THE COURT: And they will be produced when?

19 MR. KOBRE: Your Honor, I think we can produce those
20 within a week.

21 MR. FETTERMAN: Your Honor, Mr. Kobre's explanation to
22 the court raises a concern for defense counsel, which is that,
23 as I said to the court, it's our belief that the government
24 underinvestigated this case and then indicted it prematurely,
25 and I am concerned that they are now using the grand jury to

H9I7SIMC

1 continue their investigation. I mean Mr. Kobre almost said as
2 much. He said his investigation is continuing. And it's a
3 real concern that they're continuing to get documents. This
4 has happened post indictment. We got 2 million pages since the
5 last conference, which was many months after the original
6 indictment. So, I'm just raising it as a concern, your Honor.

7 MR. KOBRE: If I can briefly respond. As defense
8 counsel well knows, a large number of those pages that he is
9 referring to are e-mail accounts that were obtained through a
10 search warrant that was issued very early on in this
11 investigation. Defense counsel knows that because that search
12 warrant affidavit and warrant for that account were produced to
13 him in March of this year, about a month after the indictment
14 was returned.

15 So, it's really a red herring, your Honor. Again, the
16 government investigation is continuing, and to the extent we
17 get additional documents, we will produce them promptly to the
18 defense.

19 THE COURT: All right. Defendants have proposed that
20 the government complete discovery by October 5. Are you
21 suggesting that's not possible?

22 MR. KOBRE: No, your Honor, we will produce everything
23 that's in our possession by October 5, and to the extent that
24 more material comes into our possession after that, we will
25 produce it promptly to the defense.

H9I7SIMC

1 THE COURT: All right. We will wait and see what
2 repercussions that has. How is October 23 for motions?

3 MR. KOBRE: That's fine for the government.

4 THE COURT: OK. And how long does the government
5 anticipate needing?

6 MR. KOBRE: We would ask for two weeks to respond.

7 THE COURT: OK, that would be November 6, and any
8 reply by November 9, and that would include motions in limine.

9 MR. KOBRE: Thank you, Judge.

10 MR. FETTERMAN: So, your Honor, we had in the previous
11 schedule pretrial submissions were to be due January the 2nd.
12 That date needs to be moved earlier. And I was wondering if we
13 could -- and perhaps your Honor has already ruled on this --
14 but we could make motions in limine concurrent with that date
15 as opposed to other motions. Because, as your Honor is aware,
16 the motions in limine are often the sort of last thing as
17 you're getting ready for trial that you are aware of could be a
18 problem, and so I would just suggest to the court that it would
19 certainly be beneficial to the defense, particularly since we
20 lost the week, if we could make our motions in limine with the
21 pretrial submissions. And then we need to pick a date. It's a
22 little bit complicated. I don't have a calendar in front of
23 me, but it falls right around Christmas when you back it up.

24 THE COURT: I have a calendar, and what I propose is
25 to leave Christmas week fallow and be generous about the dates

H9I7SIMC

1 ahead of it.

2 If pretrial submissions are due December 11, I think
3 that leaves you time to do your last minute preparation as well
4 as celebrate the holidays.

5 MR. FETTERMAN: Thank you, your Honor. Could we
6 include the motions in limine with that?

7 THE COURT: Yes, you can.

8 MR. FETTERMAN: Thank you, your Honor.

9 THE COURT: Now December 11 for the pretrial
10 submissions. I think it would be better for the motions in
11 limine come December 4 so that I will have everything in front
12 of me December the 11th.

13 OK. Any response to the motions in limine, can that
14 be due the 11th, Mr. Kobre?

15 MR. KOBRE: Yes, your Honor.

16 THE COURT: OK. And with respect to pretrial
17 submissions, voir dire and requests to charge, you may already
18 know this, but I like to have them on the same disk, the
19 government's proposal first, the defense red lined proposal
20 second, and any authorities you wish me to consider.

21 I have started using the voir dire that some new
22 judges are using, which is to have most of the questions in
23 writing and to have each juror stand, the first juror responds
24 to each question, the next juror responds to which questions as
25 to which the answer is yes, such as do you prefer the

H9I7SIMC

1 government testimony to defense testimony, things like that. I
2 am happy to share a copy of it with you from my last criminal
3 trial.

4 MR. FETTERMAN: That would be great.

5 MR. KOBRE: Yes.

6 THE COURT: OK. My deputy will send those out.

7 MR. FETTERMAN: Great. Thank you.

8 THE COURT: Anything further?

9 MR. KOBRE: Not from the government, your Honor.

10 MR. FETTERMAN: Yes, your Honor. We also had filed a
11 motion for a bill of particulars.

12 THE COURT: Oh, right.

13 MR. FETTERMAN: And, as I mentioned, it's really
14 important for us, your Honor. The government has alleged a
15 Ponzi scheme involving \$96 million and I think over 130
16 investors, and they specified certain victims with a capital V
17 in the indictment, and there are like 20 potential events.

18 Everything is vague in the indictment, and we think at
19 this point, Judge -- particularly now that they're continuing
20 to investigate -- this really is feeling a lot like trial by
21 ambush, and I think that due process really at this point
22 requires -- and we have submitted authorities to the court; the
23 government's response has been in our calls -- and I'm
24 obviously summarizing in effect -- we produced lots of
25 discovery; you have what you need.

H9I7SIMC

1 That has not been a sufficient response in the cases
2 that we cited.

3 THE COURT: Let me hear from the government. I have
4 in front of me your request. Now, the government has said that
5 it produced files for each purported victim and all documents
6 relating to that victim? Is that correct?

7 MR. KOBRE: To the extent we have interviewed
8 particular victims and have obtained document from them, when
9 we produced those to the defendant we have lumped them together
10 in a folder with the name of the victim.

11 But, your Honor, the government would just ask for an
12 opportunity to respond on the papers. Defense filed their
13 motion just Wednesday, and we don't believe a bill of
14 particulars is appropriate in this case. There is a detailed
15 criminal complaint defendants have. They have a detailed
16 indictment, they have extremely organized discovery and a great
17 deal of it, and we just ask for the opportunity to respond to
18 the motion.

19 THE COURT: All right. It would be helpful when you
20 respond to give me, let's say, an exhibit showing what you have
21 produced and what you are not yet producing to them by way of
22 bill of particular information.

23 MR. KOBRE: Yes, your Honor.

24 MR. FETTERMAN: And, your Honor, we will wait for the
25 government's response obviously, but I just wanted to let the

H9I7SIMC

1 court know. My understanding is -- I don't have the exact
2 numbers in front of me -- that we are talking about six to
3 seven investors that they've produced in that fashion.

4 There is an allegation that there are 130 investors,
5 that these are victims. There are all sorts of problems with
6 the government's theory. It's significant to us for them to
7 tie each person that they think was defrauded to at least the
8 event that they say this person was defrauded as a result of.
9 In other words, the whole premise of their case is that
10 Mr. Meli made a representation that he had contractual rights
11 to a particular production and that in truth and in fact he did
12 not; and, therefore, he was defrauding these investors.

13 Well, it's important to us to know which investor and
14 which theatrical production or musical event it is. And I
15 think when your Honor looks at the authorities, other courts in
16 similar circumstances, particularly with very large productions
17 of documents, have ordered a bill of particulars. Thank you.

18 THE COURT: I will wait to see the government
19 response. Thank you.

20 MR. KOBRE: Thank you.

21 THE COURT: Have we set a date for any reply?

22 MR. KOBRE: Your Honor, if the government can have two
23 weeks to reply to that?

24 THE COURT: Oh, OK, two weeks for a response. And
25 then if there is a reply from defense counsel, say one week?

H9I7SIMC

1 MR. FETTERMAN: That would be fine.

2 THE COURT: Thank you.

3 MR. FETTERMAN: I have one more housekeeping matter to
4 raise with the court. Our firm has identified a potential
5 conflict where we have advised the defendant of it. We are
6 working on a couple of small things and plan to send the court
7 a letter suggesting a Curcio hearing on that issue.

8 Mr. Stein, whom the court knows, has come in. He is
9 independent and conflict free, so I don't think it's a pressing
10 issue. But I just wanted to just alert the court we will be
11 sending a letter, and then at the court's convenience obviously
12 we will be available for a Curcio hearing.

13 THE COURT: All right. What is the nature of the
14 potential conflict?

15 MR. FETTERMAN: There is another party who is related
16 to this case that has a relationship with another client of the
17 firm. We really think it's fairly attenuated and only a
18 potential for conflict, but I just wanted to put it on the
19 court's radar so that our letter didn't come out of left field.

20 THE COURT: All right. Given that it's your concern,
21 I would appreciate your including a script of what should be
22 asked of your client, rather than having the government have to
23 do it.

24 MR. FETTERMAN: We were planning on that, and we will.

25 MR. KOBRE: Thank you Judge.

H9I7SIMC

1 THE COURT: Anything else?

2 MR. KOBRE: Not from the government.

3 MR. FETTERMAN: Not from the defense.

4 MR. MIEDEL: No, your Honor.

5 THE COURT: Thank you. We are adjourned.

6 (Adjourned)

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